

**Application No. 10/524,345**

**Amdt. dated February 11, 2008**

**Response to the Office Action of September 19, 2007**

### **REMARKS/ARGUMENT**

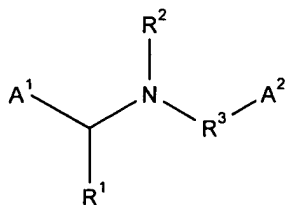
This response is submitted under 37 C.F.R. § 1.111 to the Office Action of September 19, 2007.

Claims 2, 4, 6, 8, 9, and 12-22 are pending in the application with claims 16 and 22 having been currently amended, and claims 1, 3, 5, 7, 10, and 11 having been canceled.

Claims 12, 16, and 22 have been objected to because they were based on rejected claims. Claims 16 and 22 have been re-written as independent claims and claim 12 remains dependent upon amended claim 22. Withdrawal of the objections and allowance of claims 12, 16, and 22 are respectfully requested.

Claims 2, 4, 6, 8, 9, 13-15, and 17-21 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. (WO99/42447).

Moloney et al. disclose compounds of formula (I)



and salts thereof as phytopathogenic fungicides wherein A<sup>1</sup> is substituted 2-pyridyl; A<sup>2</sup> is optionally substituted phenyl; R<sup>3</sup> is -(C=O)-, -SO<sub>2</sub>- or -(C=S)-; R<sup>1</sup> is hydrogen, optionally substituted alkyl or acyl; and R<sup>2</sup> is hydrogen or optionally substituted alkyl are useful phytopathogenic fungicides.

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The Examiner has stated:

"The difference between the prior art compound and the instantly claimed compound is the alkylene group between the pyridyl group and the benzamide moiety. In the instant compound, alkylene group is ethylene. In the prior art compound, alkylene group is a methylene group. The prior art compound and the instant compound are homologues of each other. Homologues are compounds that differ by a methylene linkage. Here, the Moloney compounds are also fungicides as are the instant compounds. See line 4 of page 2.

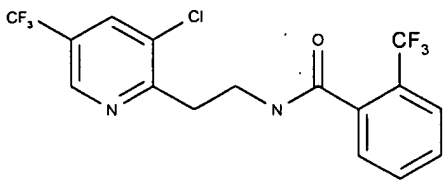
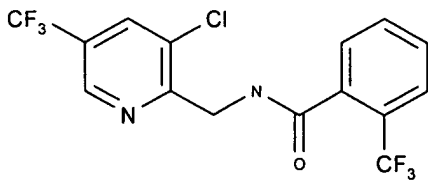
It would have been obvious to one of ordinary skill in the art to synthesize homologues of this class of compounds and compositions. Accordingly, the compounds are deemed unpatentable therefrom in the absence of a showing of unexpected results for the claimed compounds over those of the generic prior art compounds."

Accordingly, Applicants submit the following experimental data to show unexpected results that demonstrate the benefits in terms of fungicidal activity of an ethylene group linking the pyridyl and benzamide moiety with each other, rather than a methylene group.

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Compound		<i>Botrytis cinerea</i>	<i>Alternaria brassicae</i>
According to the invention		Good to very good activity (80-100%) at 330 ppm	Good to very good activity (80-100%) at 330 ppm
Compound 1 of U.S. 6,503,933 (Maloney et al.)		No activity at 330 ppm	No activity at 330 ppm

This finding would have been surprising to the person of ordinary skill in the art and would not have been rendered obvious by the cited reference. It is therefore requested that the rejection of claims 2, 4, 6, 8, 9, 13-15, and 17-21 under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. be withdrawn.

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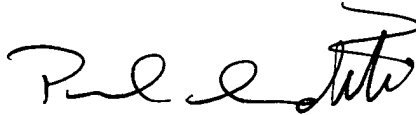
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In view of the foregoing, it is submitted that this application is now in condition for allowance and an early Office Action to that end is earnestly solicited.

Respectfully submitted,

11 Feb 08

Date



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